

1                   TRIBAL CONSULTATION MEETING ON  
2                   REVISING TRIBAL SHARES FORMULAS  
3                   FOR THE REAL ESTATE APPRAISAL PROGRAM  
4   Office of the Special Trustee For American Indians  
5                   Oklahoma City, Oklahoma  
6                   June 30, 2009  
7  
8   Debbie Meisner  
9   Director of Administrative Operations  
10   Office of Appraisal Services (OAS)  
11   Eldred Lesansee  
12   Deputy Chief Appraiser, OAS  
13  
14   Lee Frasier,  
15   Office of the General Affairs  
16  
17   Sally Hernandez  
18   Office of the General Affairs.  
19  
20   Frank Perniciaro  
21   Office of the General Affairs  
22  
23   Robert Hatfield  
24   Office of Appraisal Services  
25   Lawton, Oklahoma

1 MS. MEISNER: Okay, I guess we're going  
2 to get started. Good morning. My name is Debbie  
3 Meisner, I'm in the Office of Administrative  
4 Services out in Albuquerque, and we are really,  
5 really glad to have you here. I do first want to  
6 apologize for the accommodations. I've now learned  
7 we should call our FTOs to find out what might be an  
8 appropriate place to hold it, a room like this, so  
9 we will do that in the future. But we are very,  
10 very glad that you are here. We do have some  
11 special guests. We have in the back Donna Irwin,  
12 who's the Physical Deputy Special Trustee and also  
13 now the Acting Special Trustee. We have lots of OST  
14 staff. Sandra Nixon Fay, who is the OST Deputy  
15 Chief Appraiser.

16 MR. LESANSEE: Good morning.

17 MS. MEISNER: Lee Frasier, who's at the  
18 Office of the General Affairs. Sally Hernandez, the  
19 Office of the General Affairs. Frank Perniciaro,  
20 Office of the General Affairs. And Robert Hatfield,  
21 also from the Office of Appraisal Services in  
22 Lawton. And Mel Birch, who is the Legal Trust  
23 Administrator for Oklahoma.

24 And what we would like to do is make sure  
25 there's a white tablet going around, if you could

1 please sign-in, and also after the Power Point  
2 presentation if you do have questions, if you can  
3 stand, say your name, who are representing so the  
4 court reporter can get all the vital information  
5 that we need in order to document this proceeding.

6 So with that. Lee.

7 MR. LESANSEE: Thank you.

8 Well, first of all, I appreciate you  
9 coming to the meeting. And I -- and I hope that we  
10 walk away with some ideas about the tribal shares  
11 and come up with -- we'll present some of our ideas  
12 as a team. We have listened to many tribes across  
13 the country during the annual funding agreements and  
14 they have brought forth some issues and primarily --  
15 the primary focus or the main issue is usually not  
16 insufficient amount of money, and what's also  
17 been -- what we found is that there's -- there's  
18 varying tribal shares formulas across the regional  
19 offices, which makes it difficult to administer the  
20 tribal shares formulas to the tribal programs, so  
21 hopefully this -- what we -- the main purpose of the  
22 meeting is to establish the dialogue, to discuss the  
23 issues and present some ideas, and hopefully have an  
24 open discussion at the end of the presentation. And  
25 if you could hold your comments and so forth till

1 the end and we'll have a, you know, we'll have an  
2 open discussion at the end, questions and answers.

3 Lee and I will alternate as far as the  
4 presentation is concerned, and we will -- we'll  
5 present some ideas at the end as far as -- and then  
6 provide preferred options, an idea of what we think  
7 will be, you know, a -- be considered as a good  
8 option to -- or an option that may facilitate some  
9 of the issues or meet some of the issues that we  
10 have heard about the country.

11 In 1995 BIA developed region-by-region  
12 formulas use to allocate tribal shares for the  
13 appraisal program. When the appraisal program was  
14 transferred to BIA to OST in 2002, BIA awarding  
15 officials and OST agreed to continue the  
16 region-by-region formulas to maintain continuity.

17 Tribal shares calculated in '95 have not  
18 changed. The tribal shares have been recalculated  
19 in step with -- have not been -- the tribal shares  
20 have not been recalculated in step with increased  
21 regional appraisal budget. In 2002 when we  
22 transferred I believe our budget was somewhere  
23 around \$3.4 million and it's changed since then,  
24 it's grown. In 2010 we are hoping 10.9 -- or \$10.9  
25 million I believe, and so with the -- looking at

1 the -- with this effort we are hoping that -- to  
2 recalculate the formula so you will be consistent  
3 with the changing tribal shares formula. There may  
4 be equities between tribes that have contracted and  
5 compacted at different times, meaning those that in  
6 1995 that came onboard initially there were  
7 negotiating based on 1995 dollars and the tribes  
8 that recently came onboard with the contracting and  
9 sometimes compacting were based on -- they were  
10 negotiating based on more current budget levels.

11 The benefit of revising. Revised  
12 formulas will insure uniformity and transparency in  
13 determining tribal shares and funding residual for  
14 the inherently federal functions.

15 The inherently federal functions for the  
16 appraisal services is the review and approval  
17 function. The appraisal preparations function is  
18 what's considered to be commercial activity.

19 Lee.

20 MR. FRAZIER: The 25 USC, that's the  
21 United States Code, this is actual statute, the  
22 actual law which determines --

23 FROM THE AUDIENCE: Can't hear you.

24 MR. FRAZIER: Oh, sorry. The law that  
25 regulates how much, you know, what shares, how

1 shares are allocated to tribes for different  
2 programs is found at 25 USC 450j. This is Title I,  
3 PO self-determination, self-governance. This is  
4 actually Title I statute but it applies to both  
5 Title I and Title IV programs.

6           It says, "The amount of funds provided  
7 under the terms of the self-determination contracts  
8 and compacts entered into pursuant to this  
9 subchapter shall not be less than the appropriate  
10 Secretary would have otherwise provided for the  
11 operation of the program or portions thereof for the  
12 period covered by the contract."

13           And what -- we have a little article  
14 interpretation here because the language is actually  
15 a little funny when you really look at it, but OST  
16 interprets this to mean that what a tribe is  
17 allocated is what the secretary otherwise would have  
18 spent on that tribe for performing that function for  
19 them. In other words, for appraisals the tribal  
20 share you should get for performing appraisals is  
21 what the Secretary of the Interior, with Special  
22 Trustee as the delegate, otherwise would have spent  
23 on your tribe for appraisals. That is like -- if  
24 you look at the actual statute language, it's a  
25 little funny because it doesn't say on a

1 tribe-by-tribe basis, but everybody in Interior  
2 interprets that to mean on a tribe-by-tribe basis.  
3 What the secretary would have spent on your tribe  
4 for that function program service.

5 MR. LESANSEE: Further statutes and  
6 regulations?

7 MR. FRAZIER: Yeah. This is -- a lot of  
8 you have been involved in self-government or  
9 self-determination for a while but you are all  
10 familiar with what the residual is, but for those of  
11 you that are a little bit new to it, a residual is  
12 what -- you see a portion of the funds that Interior  
13 Department holds back to perform the inherently  
14 federal functions, and depending on whether it's OST  
15 or BIA this can vary quite a bit. I've seen  
16 percentages that are as low as 20 percent, I've seen  
17 percentages that are as high as 65, 70 percent, so  
18 whether they start with a regional allocation, a  
19 regional budget, they take off -- they withhold the  
20 residual for the central office for the inherently  
21 federal function, and what's left over is what is  
22 available for tribal shares. So if it's a 20  
23 percent residual, 80 percent of the regional budget  
24 would be available for tribal shares. And then how  
25 that gets allocated that's what we are here to talk

1 about today.

2 At what point -- what funding formula  
3 should we have to comply with the statute, which  
4 says that you should get, if you take on the  
5 function of appraisals you should get what the  
6 secretary otherwise would have spent on you if you  
7 were not contracting or compacting.

8 And then CFR. This is something that --  
9 25 CFR 1000.95, this is something that we are  
10 supposed to be doing every year. I think some BIA  
11 offices and programs do this. We have been a little  
12 bit lax and we are coming -- starting next year we  
13 hope to come in compliance with this. And this  
14 says -- it's actual in the regulations. Residual  
15 information will consist of residual functions  
16 performed by the BIA. We inherited this program  
17 from BIA so this language pertains to us.

18 A brief justification why the function is  
19 not compactible and the estimated -- we are talking  
20 about the residual here again, so the residual  
21 information -- the residual pertains to those things  
22 that we not compact out. They are inherently  
23 federal, they are inherently governmental, they are  
24 inherently federal. We cannot compact them out so  
25 that's why this pertains to that. That's why it's

1 called a residual.

2 But every year we have to give you a  
3 brief justification why the function is not  
4 compactible and an estimated funding label for each  
5 residual function. Each regional office in the  
6 central office will compile a single document for  
7 distribution each year that contains all the  
8 residual information of that respective office. And  
9 the captions reads -- if you go into the -- this  
10 thing, if you feel like reading it, it says by March  
11 1st of every year we are supposed to be giving you a  
12 list that says here's the residual, here are the  
13 inherently federal functions, here are the  
14 inherently governmental function, we do not -- we  
15 interpret it not to be compactible. Here are the  
16 funds we are holding back from that. And we are  
17 supposed to be giving that to you every year.

18 And so starting next year we will be  
19 doing that by March 1st of each year. Each year  
20 we'll be sending out a tribal leader letter,  
21 basically saying here is our list of the residual  
22 functions. Of course we only have one or two. We  
23 are not like BIA, we don't have dozens and dozens of  
24 programs, we have two, so it should be fairly easy  
25 for us to do.

1                   MR. LESANSEE: One thing else I would  
2 like to note is that the 1000 -- part 1000 is for  
3 compact. I believe there's a -- in 900 I believe it  
4 pertains to compact.

5                   MR. FRAZIER: Right. Yes.

6                   MR. LESANSEE: And it is consistent  
7 language?

8                   MR. FRAZIER: It is consistent language,  
9 yes. Title I and Title IV mirror each other.

10                  MR. LESANSEE: Okay. Speaking of  
11 residual. The current residual for the appraisal  
12 program is at 20 percent. And that was a policy  
13 that was established by the former chief appraiser  
14 of the Department of Interior, and we have been  
15 since that time, I believe it was 2005 I think it  
16 was, since that time we have been going on the  
17 residual of 20 percent across the board.

18                  The future, OST will need to insure that  
19 the residual is sufficient to fund those activities  
20 which by law must be carried out by federal  
21 officials to conduct the federal inherent function,  
22 or IFF.

23                  First idea, it's a work based formula.  
24 The tribal share is equal to -- if you look at this  
25 formula here, it says the regional budget minus the

1 residual will be the amount of money that's  
2 available to the tribe. And then what's applied to  
3 that is the average workload -- average tribal  
4 workload divided by the average regional workload to  
5 get the fraction, and it's applied to the funding  
6 available to the tribe, to come up with a  
7 proportional share for each tribe. And this work --  
8 then again this is a work base formula, the workload  
9 will be averaged over a set number of years, of  
10 fiscal years to smooth out any demands. OST intends  
11 for this formula to be dynamic. It will be adjusted  
12 every year, and this type of formula is now used in  
13 the eastern Oklahoma region.

14                   And to illustrate the work base formula  
15 you have got tribes A, B and C. In 2005 A, OSOES  
16 provided appraisals, for Tribe A 35 appraisals,  
17 Tribe B 0 and 20 for Tribe C. For the fiscal year  
18 2006 32 and 10. And fiscal year 2007 31, 10 and 6  
19 were provided for the three tribes. The regional  
20 budget is -- using this hypothetical example is  
21 \$100,000, residual, if you apply 20 percent to the  
22 100,000, \$20,000 is held back as a residual to carry  
23 out the inherently federal function. The available  
24 budget to the tribe is \$80,000.

25                   So the regional average, the total amount

1 of work over the -- provided by the region is 48.  
2 The average regional -- average number of workloads  
3 is 48. You apply that to 32, 4 and 12, you get  
4 67 -- about 67 percent, 8 percent and 25 percent for  
5 Tribe C.

6 And then you apply these percentages to  
7 the -- to the available budget and you get \$53,000  
8 for Tribe A, 67,000 for Tribe B, and 20,000 for  
9 tribal share for Tribe C.

10 MR. FRAZIER: This is just -- we came  
11 up -- when we say we want the formula -- okay --  
12 when we say we want the formula to be dynamic, that  
13 doesn't mean we're going to be changing the formula  
14 every year, it just means we will be recalculating  
15 it every year so if the budget increases -- the  
16 formula will stay the same but because we are  
17 multiplying that formula by a larger regional budget  
18 your share will go up, and so we just wanted to  
19 show -- this was an example of, we wanted to show  
20 how as the demand changes the shares could go up or  
21 down like -- go back to this one here, you see Tribe  
22 A is kind of staying the same 35, 30, 31. Go to the  
23 next share which is staying the same as it was this  
24 year, so their -- their average stays about the  
25 same.

1                   This tribe, Tribe B, they are ramping up,  
2 their demand is ramping up, so they go to 0, 2, 10.

3                   Tribe C they are coming down, their  
4 demand is coming down, 20, 10, 6. So if you look at  
5 their tribal shares. Tribal A, down here, is about  
6 \$53,000, and this is a particular concept. This  
7 will be like in FY 2008.

8                   We are looking at the past three years  
9 and we're averaging them out. And so over the past  
10 three years Tribe B, their average is about 4 even  
11 though they are ramping up. See this year they were  
12 10 but two years ago they were 0, so their average  
13 is only 4. Tribe C, they are coming down so back  
14 three years ago they had 20 but now they are down to  
15 6, their average is 12. So look at the tribal  
16 shares for B and C. Tribe B is only \$6,600,  
17 tribe -- Tribe C is 20,000.

18                   You go to the next year though, if the  
19 demand stayed about the same, now look at the  
20 difference. Now Tribe B is up to \$12,000, Tribe C  
21 is \$12,000, they are ramping down, the other one is  
22 coming up.

23                   So if your demand changes your tribal  
24 share could change too. Now, if you are like Tribe  
25 A where your demand is about the same it's not going

1 to change much. But the idea of this being dynamic  
2 is if you -- if for some reason your appraisal needs  
3 begin to increase over the years your shares are  
4 going to go up.

5 Now we talked about, here we are just  
6 using the three year average. It doesn't have to be  
7 a three year average, it could be a four year  
8 average, a five year average. The more years we use  
9 the smoother that curve is going to be because it's  
10 going to take -- it's going to take more of an  
11 increase to have just a one year -- you know, say  
12 you are at five, five, five, five, ten, well, that  
13 average isn't going to be ten, it's going to be  
14 closer to five.

15 Now, the shorter -- the shorter number of  
16 years, the fewer number of years we use, if we only  
17 use like one year average which is just one year or  
18 a two year average, that's going to be more  
19 responsive to demand spikes. So if you think, boy,  
20 I -- I -- you know, I think I could have a real  
21 increase next year and I want that tribal share to  
22 be reflected right away, then you probably want a  
23 fewer number of years used in the average. On the  
24 other hand, if you have -- if you have a spike  
25 downwards, that's going to be reflected

1 immediately -- or more immediately. Fewer number of  
2 years you use in the average the more spike you are  
3 going to have. The more number of years, like, you  
4 know, look at the stock market, a moving average of  
5 the stock market, you know, a ten year moving  
6 average, very smooth curve. You know, the shorter  
7 number of years you use in the average, spikey. So  
8 that's part of the discussion we have to think  
9 about. How many years -- if we're going to average  
10 it, we're going to use this formula -- our workload  
11 base formula, how many years do we want to use in  
12 the average. The fewer number of years the more  
13 responsive, but very spikey.

14 MR. LESANSEE: Idea two talks about  
15 equal division. And simply -- it's not based on  
16 workload but it's primarily based on the number of  
17 tribes in the region.

18 MR. FRAZIER: Yeah, that's what it is.  
19 Those numbers are there just to say -- they are the  
20 same number -- actually the demand doesn't even  
21 matter.

22 MR. LESANSEE: No, it doesn't. Because  
23 what you are doing -- say -- how many tribes do you  
24 have in the Southern Plains?

25 FROM THE AUDIENCE: Beg your pardon?

1                   MR. LESANSEE: How many tribes do you  
2 have in the Southern Plains?

3                   FROM THE AUDIENCE: Total tribes?

4                   MR. LESANSEE: Just total tribes.

5                   FROM THE AUDIENCE: Twenty-seven.

6                   MR. LESANSEE: Okay. Well, equal shares  
7 you would divide -- each tribe will have one --  
8 divide it by 27, that will be their share. And it  
9 doesn't -- the workload for each of the tribes  
10 doesn't matter. What it matters is how many tribes  
11 you have and you divide that by, you know, one --  
12 divided by 27 to come up with your equal share for  
13 each tribe.

14                   And the residual, like in this scenario  
15 here, the \$100,000 tribal allocation, say, for  
16 Southern Plains, would hold back 20 percent of that  
17 for \$80,000, and for tribes, say hypothetical one,  
18 the one tribe 1/27th would be applied to \$80,000 and  
19 that would be the tribal share for each of the 27  
20 tribes in Southern Plains region.

21                   MR. FRAZIER: This is the type of formula  
22 that the midwest region uses right now. They have  
23 36 tribes, they just take the available regional  
24 budget divide it by 36, here is your tribal share.  
25 Doesn't matter if you had 100 appraisals or 0,

1 here's your tribal share. Your tribal share is  
2 exactly the same.

3 MR. LESANSEE: It's shown right here as  
4 equal amount. Each tribe has the same amount, or  
5 \$27,000 rounded.

6 Okay, land based. Idea 3, land based  
7 formula. We've had one or two regions in OAS that  
8 operates -- uses the land based formula. With the  
9 land based formula, you know, you have a tribe  
10 with -- that has, say, 1,000 acres, Tribe B with 500  
11 acres and Tribe C with 100 acres, and for  
12 accumulative total of say 15, 1,600 acres for the  
13 whole region. And so 1,600 is divided into 1,000,  
14 500 and 100, and you have got 62 percent as a  
15 result, 31 and 6.25 percent, as a breakout as far as  
16 a tribal share.

17 And, again, those percentages are applied  
18 to the \$80,000, which is available to the tribe --  
19 tribes in the region. So that represents 62 or 63  
20 percent for Tribe A, 31 percent for Tribe B, and  
21 6.25 percent for Tribe C. And then you multiply  
22 that to the \$80,000 and you get your dollar amounts  
23 of 50, 25 and 5,000.

24 MR. FRAZIER: And the Alaska region uses  
25 a formula like this but in Alaska -- I don't know if

1 you are familiar Alaska, they also have town sites,  
2 and so they don't do a straight acreage. They have  
3 kind of a way -- if you have a town site which is  
4 not very -- not that many acres but they feel like  
5 they need to give a little more weight to the fact  
6 that you have a town site as opposed to some rural  
7 setting, so they have a weighted average where  
8 they -- they look at a tribe and they say this is  
9 how many acres you have, this is how many town sites  
10 you have; they put those together to come up with a  
11 representative of the entire Alaskan region. So  
12 Alaska does use a land based formula.

13 MR. LESANSEE: The potential problem  
14 with this formula is that Tribe A may have 1,000  
15 acres but there might not be a whole lot of activity  
16 as required in the appraisal, whereas Tribe C might  
17 be in the urban fringes and so forth, and they might  
18 have a lot of activity, but it's not accounted --  
19 their activity is not accounted for. You know, as  
20 you see here Tribe C, you know, amounts to 5,000  
21 because, you know, their land is only 100 acres in  
22 size, but it is not consistent with the amount of  
23 activity.

24 FROM THE AUDIENCE: So on that idea  
25 number two, at the bottom where it has Tribe A.

1                   MR. LESANSEE: Can we hold the question  
2 until the end?

3                   FROM THE AUDIENCE: Well, I was just  
4 going to look at it only because that formula, it  
5 doesn't matter what's on the left side; right?

6                   MR. FRAZIER: It doesn't.

7                   MR. LESANSEE: No.

8                   MR. FRAZIER: You talking equal division?

9                   FROM THE AUDIENCE: Right.

10                  MR. FRAZIER: It actually doesn't matter.  
11 I mean, we have got it up there just to show the  
12 data is the same but on this formula it doesn't  
13 matter how many appraisals you have, it just matters  
14 how many tribes are in the region, everybody gets an  
15 equal share.

16                  MR. LESANSEE: And with this it matters  
17 how much acreage you have in the region or owned by  
18 each tribe and trust -- trust status.

19                  FROM THE AUDIENCE: Thank you.

20                  MR. LESANSEE: And then -- go ahead.

21                  MR. FRAZIER: Yeah, this is another --  
22 actually all these different ideas, these are  
23 actually, there are regions that are using either a  
24 version of this or a component. This would be a  
25 population based division. And, again, this is a

1 hypothetical region with just three tribes. Say you  
2 had Tribe A with 3,000 enrolled tribal members,  
3 Tribe B with 2,000 enrolled tribal members, Tribe C  
4 with 1,500, very similar mathematically to the land  
5 based. You just say, you come up with regional  
6 population of 6,500, Tribe A has 46 percent, Tribe B  
7 has 30 percent enrolled tribal members, Tribe C 23.  
8 The same thing, you multiply those percentages by  
9 the available regional budget, you come up with  
10 tribal shares, 36, 24, 18.

11 So this is an allocation based on the  
12 number -- the proportion of enrolled tribal members,  
13 can be the number of enrolled tribal members in your  
14 region. So if you have got a lot of tribal members,  
15 enrolled tribal members relative to the rest of the  
16 region your share is going to go up.

17 But similar to the land based division,  
18 that's not -- there's no necessary correlation  
19 between the number of tribal members you have and  
20 the amount of appraisal activity you have.

21 MR. LESANSEE: And it's based on -- like  
22 with the land based, it's an assumption that the  
23 more population you have the more appraisal activity  
24 you might -- might result of that.

25 Hybrid.

1 MR. FRAZIER: Oh, hybrid.

2 MR. LESANSEE: This is the most  
3 complicated one.

4 MR. FRAZIER: This is the most  
5 mathematically complicated so we -- it may be easier  
6 actually to talk about what used to be the old  
7 eastern Oklahoma formula. And the old eastern  
8 Oklahoma formula, what they did, they said, okay,  
9 we're going to take the available recent budget and  
10 we're going to divide it in half. Half of it is  
11 going to be divided up equally according to the  
12 number of tribes, how many tribes are in the eastern  
13 Oklahoma region, anyone know?

14 FROM THE AUDIENCE: 20.

15 MR. FRAZIER: 20. So they said, okay, we  
16 are going to take half of the regional budget,  
17 everybody, every tribe gets 1/20th of that. Now, we  
18 are going to take the other half and we're going to  
19 do that on a workload basis, like idea number one.  
20 So then they looked at the appraisal workload over  
21 the past. I think they just did -- they may have  
22 done just one year. And they said, here -- okay,  
23 you tribe, you know, Cherokee, here's -- you had a  
24 lot of appraisal work so you are going to get more,  
25 you know, another tribe, smaller tribe, you didn't

1 have very many appraisals, so for this half of the  
2 money, for the workload half, you are going to get a  
3 smaller percentage.

4                   So they divide it in half. Half,  
5 everybody gets one share of it, the other half is  
6 going to be based on your workload. And this is  
7 what -- this is the idea we showed here. You can  
8 have weights. That's what these are, these are  
9 weights. So we can say, this would be a three part  
10 hybrid formula and we do have regions that have a  
11 hybrid formula; southwest uses a hybrid, northwest  
12 uses a hybrid. Southwest, they have used four  
13 factors, they use --

14                   MR. LESANSEE: Originally when the  
15 formula was developed, it identified five factors:  
16 Land based, population, the amount of realty  
17 transactions, the amount of workload, present  
18 workload, and then the -- the equal shares, the  
19 number of tribes in the region.

20                   In the case of the southwest it was 25  
21 tribes, it was 1 over 25.

22                   MR. FRAZIER: Yeah. And this one, this  
23 -- again, this is just a hypothetical in a very  
24 small region of three tribes, but we would use three  
25 components: We would use the land, the population

1 and the workload. And this is weights. 25 percent,  
2 .25, 25 percent. We said, okay, what we are going  
3 to do here, whatever your land base is, we're going  
4 to give that a quarter. We're going to take a  
5 quarter of the available money and we're going to  
6 allocate it according to land. We're going to take  
7 a quarter of available money and allocate it  
8 according to your tribal enrollment and we're going  
9 to take half of the money and allocate it according  
10 to workload, and then you just measure the amount.  
11 So this would be -- so this tribe, go back to the  
12 previous numbers, this tribe has 62 percent of the  
13 land base, you multiply that times the weight, the  
14 .25, one-quarter is .25, and you get .1563, which is  
15 the same thing as this percent, 15 percent. So 15  
16 percent of the overall available budget is going to  
17 go to this tribe because they -- they are -- they  
18 have 62.5 percent of the land and it gets  
19 one-quarter of the weight.

20                   And you go through each one of these.  
21 Workload. This tribe did 67 percent of the  
22 workload. We gave that half the weight, 50 percent,  
23 66 times .5 is .334, you add these numbers up, this  
24 one, this one, this one and they all add up to this  
25 one. And this weight, this total weight is the same

1 thing as a percentage. You know, basic high school  
2 math, you know, it's just percentages times  
3 percentages.

4 So what you end up with a total weight  
5 when you combine these three components is this  
6 tribe, Tribe A gets .6050, which is the same thing  
7 as 60 percent; this tribe gets 19.67 percent; this  
8 tribe gets 19.83 percent. And you multiply that by  
9 the regional budget. Here's these numbers here, and  
10 you get a tribal share of 48, 15, 15.

11 Does everybody follow the math of that?

12 MR. LESANSEE: You see the top adds up  
13 to 1.

14 MR. FRAZIER: Yeah.

15 MR. LESANSEE: And down here if you  
16 multiply all these -- add these up, you should come  
17 up to one.

18 MR. FRAZIER: Yeah. You have .25 --  
19 plus .25 -- .25 equals one, all of these numbers added  
20 together equal one.

21 MR. LESANSEE: And the idea of, on this  
22 hybrid formula was, especially for small tribes that  
23 either have a small land base and maybe a small  
24 population or maybe -- say for instance one of the  
25 tribes in New Mexico, their land base was fairly

1 small but their lands were intermixed within a  
2 community or a city within northern New Mexico but  
3 the population was high, but the workload was fairly  
4 low, so it was trying to balance, balance the  
5 differences between -- of a particular tribe as far  
6 as the characteristics or how the composition or  
7 what the -- how it's made up and how it affects the  
8 actual potential such as it was that it had direct  
9 relation -- some relationship to the workload not  
10 the workload.

11 And I think it was just to try to give  
12 the smaller tribes, I guess, an opportunity to -- to  
13 give them enough -- sufficient funds to enter into  
14 the program.

15 MR. FRAZIER: And, again, the numbers in  
16 red, the weights that we attached to each component,  
17 that's arbitrary, those can be mixed, I mean, you  
18 can decide, I want to give it equal weight to those  
19 three components so then that weight for each one  
20 would be .333, .333, .333, so whatever component.  
21 In this particular one, of course, we decided, okay,  
22 the workload is more important than population and  
23 land based, so we're going to give that 50 percent  
24 of the weight, the other two components we're going  
25 to give 25 percent each, but you can mix them.

1                   MR. LESANSEE: And it worked, I think it  
2 worked in some cases because -- another tribe down  
3 in southern New Mexico, they had a huge reservation,  
4 population is fairly light as far as numbers but the  
5 workload was, hardly ever got anything from that  
6 tribe, so we were -- I guess the idea was, hopefully  
7 this formula, this hybrid formula, this weighted  
8 average would take that in consideration and come up  
9 with equal shares and identify which regions of the  
10 Tribes are most active given the different  
11 characteristics.

12                   MR. FRAZIER: This has to do with Title  
13 IV which is self-governance which is -- Title IV is  
14 the statute that governs the compacting tribe, and  
15 this has to do with -- okay, most of the tribes --  
16 not all of them but most of the tribes that we  
17 compact with now to do appraisals receive their base  
18 funding from OSG. And every year you negotiate your  
19 annual funding agreement with OSG. And a lot of  
20 your money for appraisals is fixed, it's set -- it's  
21 at a set place and it doesn't change, and so we --  
22 we can't -- if you look there's actually a reg that  
23 says the base funding amount cannot be changed  
24 without opening up the entire AFA and renegotiating  
25 everything. So we don't want to do that.

1                   So what we are -- if -- if we were to do  
2 this, if we were to revise the formula and we  
3 decided, okay, using whatever formula, idea one,  
4 idea two or whatever formula, we decided your tribe  
5 should get \$5,000 to do appraisals and your base  
6 funding agreement says they get 1,000 for  
7 appropriations and that's it and they can't -- they  
8 cannot renegotiate this without renegotiating  
9 everything. What we would have to do is, we would  
10 have to supplement that amount. On an annual basis,  
11 on a year-by-year basis, we would have to supplement  
12 what you get in your base because by law we cannot  
13 change your base and we cannot add it to the base.  
14 It's -- I think we have it in maybe one of the  
15 slides, but it's actually a reg that you can't --  
16 you cannot change your base amount without opening  
17 up the entire, everything you do, everything -- AFA  
18 would have to be renegotiated, but we -- we want  
19 to -- we want to comply with all parts of the law.

20                   So there's one part of the law that says  
21 you need to give the tribe the same amount of money  
22 to do appraisals as the secretary otherwise would  
23 spend doing appraisals for that tribe. So that's  
24 kind of -- you know, that's a law that says we are  
25 supposed to do that.



1 is appropriated to OSG through BIA, so that money  
2 never flows through OST at all.

3           So I think most of the tribes here are  
4 old money tribes; right? You have a base amount of  
5 appropriation. That money you receive, even though  
6 OST controls the program, we don't control that  
7 money. That money never flows through OST. It all  
8 flows through OSG through your base amount, your  
9 base funding.

10           Now, if you were a new tribe, if you --  
11 if you didn't already compact to do appraisals and  
12 you came to us today and said, I'm interested in  
13 compacting appraisals, that money, even though you  
14 were compacting because you don't have a base  
15 amount, that money would flow through OST. So we  
16 have got a mix of contracting money which flows  
17 through OST. Old compacting money which goes  
18 through OSG, Office of self-governance, and new  
19 compacting money which would come through OST, so  
20 like I say, it's a muddle.

21           If we -- under using the new formula we  
22 determine that your tribe should get more  
23 performance appraisals, we would have to on a  
24 year-by-year base do a yearly supplement to your  
25 base amount to get you up to that -- to get you up

1 to that level.

2 Now, it's very unlikely but if it should  
3 happen, we determine that, hey, according to this  
4 calculation your tribe should actually get less than  
5 your base amount, it's not going to affect you.  
6 When can't touch that base amount. You get that  
7 base amount every year regardless of your demand so  
8 we can't pull money out of that. We can only add to  
9 it.

10 MR. LESANSEE: That leads to questions,  
11 comments and suggestions. This is our contact  
12 numbers, and then the -- identifies the team  
13 members, myself, Debbie, Frank and Lee and Sally  
14 Hernandez.

15 So I'll open the floor to questions. Is  
16 there any particular formula that you want to  
17 discuss or any issues regarding the tribal shares  
18 formula or presentation?

19 MR. CHARLES MALLOY: Charles Malloy.  
20 Citizen-Pottawatomie. I have two comments. Both of  
21 them appropriate for this meeting. One directly  
22 relating to your presentation and the other doesn't.  
23 And I'll deal with it first. And this has to do  
24 with a Robert Shaw, after a rocky 24 months of him  
25 being in place, finding this go round of appraisals

1 went efficiently and smoothly and we got a good  
2 product out of it and I think this is thanks to  
3 Robert Shaw.

4 MR. LESANSEE: Thanks for saying that.

5 MR. CHARLES MALLOY: The other comment I  
6 have is -- question is: How do we have input into  
7 this process, and when will these decisions be made?

8 MR. FRAZIER: Well, this is --

9 MS. HERNANDEZ: Hold on. Let me have him  
10 restate the question.

11 MR. CHARLES MALLOY: My question is: How  
12 do we have input into this process and when will the  
13 formulas decisions be made?

14 MR. LESANSEE: You can provide us with  
15 input, if you want to do written input, submit it  
16 to -- to either, any of these individuals listed  
17 here, or you can provide it to us today and -- to  
18 the team, and we'll consider it as far as all the --  
19 all the comments that we are accumulating as each  
20 tribal share goes a long.

21 And at the end, I think there will be a  
22 federal decision, I think the outcome is there will  
23 be a federal decision on the formula, this  
24 preliminary formula on the tribal shares issued for  
25 appraisals.

1 MR. CHARLES MALLOY: Thank you.

2 MR. FRAZIER: This is -- right now I  
3 believe it's six, we are doing six regional  
4 consultations, this is the very first one. So we  
5 are sort of putting our ideas out there and we are  
6 soliciting -- so this is -- this meeting right here  
7 is part of how you give us input. You can give us  
8 ideas now. Say like, that makes sense to me. That  
9 doesn't make any sense to me. Or you haven't  
10 thought about this thing. You haven't thought about  
11 this. Or my tribe has some unique factor that  
12 this -- this formula would be biased against my  
13 tribe in some way. So that's part of why we are  
14 doing these regional consultation is so that we can  
15 hear from tribes and we can hear -- get some input  
16 and some ideas, things we haven't thought of. After  
17 this meeting if you -- if you have something else  
18 you want to contribute you can e-mail us, you can  
19 call us, can you say, hey, I went back to my tribe  
20 and told them about this and they thought -- you  
21 know, my tribe thought that for our purposes this  
22 formula would be better.

23 Now, as far as what we're going to do  
24 at -- after the regional consultation, I don't think  
25 that's been decided yet. I suspect -- I think at

1 this point what it looks like we're going to do is,  
2 we're going do gather all of the input and we will  
3 send out a tribal -- another tribal leader letter  
4 saying, we received the following comments, we  
5 received the following ideas, and we're leaning this  
6 way or we are leaning that way. And then at that  
7 point we'll give tribes another opportunity to come  
8 back and say, hey, you are leaning this way, I don't  
9 like that.

10 So -- there will be multiple avenues and  
11 multiple opportunities for tribes to contribute.

12 MS. ANGELA THOMPSON: Angela Thompson,  
13 Cherokee Nation. I'm wondering if what the goal of  
14 OST is is to make these options universal across the  
15 regions or will the tribes have the operations to  
16 choose which ones is best for them?

17 MR. LESANSEE: I think the idea -- there  
18 again like Lee just said, we are getting ideas as  
19 far as -- as far as what will be the best way of  
20 going about it. Would a standard formula across the  
21 12 regions work or is there a uniqueness for each of  
22 the regions that might have -- might -- you know, a  
23 certain formula might be best. But there is, you  
24 know -- we have identified I guess one -- looking at  
25 the various numbers, you know, applying the various

1 formulas that we presented here today to the  
2 numbers, historical numbers of five years back, it  
3 appears that what is most consistent with the change  
4 in the workload is the workload based formula. It's  
5 a direct relationship in the amount of activity,  
6 appraisal activity from year to year.

7 But, yeah, we have to entertain any  
8 suggestions, ideas and so forth, but that might  
9 be -- that might be what will work, is a unique  
10 formula for each region.

11 MR. FRAZIER: Right now we do have -- we  
12 have 12 different formulas and 12 different regions,  
13 so that is still a possibility. What we couldn't  
14 have is different formulas within a region because  
15 the regions are all sharing the same pie, so --  
16 however we're going to divide up the pie has to be  
17 divided up the same way with any region.

18 MS. ANGELA THOMPSON: I have one more  
19 question. I'm sorry.

20 As far as the residuals, the 20 percent,  
21 if there's an increase or if it's going to be  
22 decreased, I think, I mean, as a tribe we should be  
23 included in either the tribal consultation process  
24 because that will affect our tribal shares; if it's  
25 increased our tribal shares will go down and I think

1 the tribe should have input on -- on that change.

2 MR. LESANSEE: Yes. As far as the  
3 residual, I was going to say, my experience and  
4 observation on how -- where residual is discussed is  
5 through the AFA and BIA, they do like the narrative  
6 justification method. Instead of doing the -- what  
7 we have applied 20 percent across the board, it  
8 is -- it's an open dialogue, because you have the  
9 tribes that are participating in the program and  
10 those that have not participated in the program and  
11 they have their interests too as well as, so it's an  
12 open dialogue to discuss what is reasonable or  
13 appropriate residual.

14 MR. FRAZIER: On the part of residual --  
15 I mean, I know that not just with appraisals, within  
16 all programs that's a live debate, that's ongoing  
17 all the time, how much is the department holding  
18 back?

19 I'm looking for that one slide here.  
20 It's a process slide. Oh well, I'll find it later.

21 As most of your work in appraisals know,  
22 it's -- there's just two step parts to all  
23 appraisals. You do the report, then you submit it  
24 to OAS and OAS does the review and approval.

25 Oh, yeah, there it is.

1                   So you submit your request to usually BIA  
2    realty or whoever, and then they forward that on  
3    either to OAS or if you are compacting or  
4    contracting the program this is you, this step is  
5    you. Then this is the part that OAS does, the  
6    regional appraiser does, which is the appraisal  
7    report review and approval. This is what is deemed  
8    inherently federal function, and this is the part  
9    that is funded by the residual.

10                  Right now this is 20 percent so, as you  
11    rightly pointed out, hey, if that's 15 percent or  
12    10 percent or 5 percent, my slice of the pie is  
13    going to be bigger, so pull that down. You have to  
14    be careful because this is a pipeline. You bleed  
15    this down to it's too small you have got a nice  
16    choke point where you've got stacks and stacks of  
17    appraisal reports and nobody to review them so  
18    you've got less coming out here, so you have to be  
19    careful. It's in your interest to make sure that  
20    that inherently federal function is not too small  
21    because you've got to get these things reviewed and  
22    approved or you're not getting -- you can't do the  
23    transactions.

24                  MS. MEISNER: Well, plus remember too,  
25    inherently federal includes things like technical

1 assistance --

2 FROM THE AUDIENCE: Debbie, we can't hear  
3 you.

4 MS. MEISNER: Inherently federal also  
5 means like technical assistance, contract and  
6 compact tribes, we don't have that included. There  
7 were some other pieces of the process that have to  
8 be included, not only in the appraisal approval.

9 MR. LESANSEE: And then each of these  
10 different steps in the process. Like I mentioned  
11 earlier, the tribes that aren't participating in the  
12 program, they will be -- of course they will be  
13 looking out for their best interest as far as making  
14 sure that the whole process is provided to them by  
15 the government, and the tribes, they are going to be  
16 looking at the increase, this amount, this  
17 particular segment.

18 MS. NELDA TYLER: I'm Nelda Tyler. I'm  
19 with the Muscogee (Creek) Nation in Okmulgee, and  
20 I'm staff appraiser, and of course I would like to  
21 work on it, but I really appreciate the fact that  
22 you brought this up because this is something that  
23 really -- this process right here has already got us  
24 in a tight hole. Our appraiser requests right now  
25 comes from realty. It goes to BIA. BIA sends it to

1 OST. OST sends it back with our scope of work. It  
2 goes back to BIA. BIA brings it back to realty and  
3 then realty brings it to me. That's the request.  
4 If anybody's on vacation, anybody's not on it, it  
5 takes weeks for that to get to me so I'm already in  
6 the hole before I even get started. Okay, now we  
7 have got the report, the request for the report in  
8 the appraiser's office, the appraisal report is  
9 done, we go backwards on that same thing. We take  
10 it to the BIA, the BIA sends it to OST, OST sends it  
11 back to the BIA, BIA sends it back to us.

12 MR. LESANSEE: Wow.

13 MS. NELDA TYLER: Where's -- that's our  
14 money.

15 MR. LESANSEE: Yes.

16 MS. NELDA TYLER: What -- you know, the  
17 BIA does not need to see the appraisal report until  
18 the packet is done to be approved.

19 MR. FRAZIER: Right. The part at the  
20 end, that's the transmittal of the property to --

21 MS. NELDA TYLER: So why are we having to  
22 show it to them beforehand? They say they have to  
23 see it before they send it on and then they have to  
24 see it when it comes back. That's not necessary  
25 because they can't do anything about the appraisal

1 report because the appraisal report is approved by  
2 OST, so what -- why is that happening to us?

3 MR. LESANSEE: I -- I don't know. Maybe  
4 it's a process that was established as far as, you  
5 know, the agreements between the tribe and the BIA,  
6 as far as doing the negotiations or something,  
7 establishing a business flow. I'm not sure how  
8 that -- that's unique. In other regions they don't  
9 have that process.

10 One thing that might alleviate that  
11 problem is, is the appraisal request and review  
12 tracking system. It's a web based appraisal  
13 tracking system that we're going to be implementing  
14 soon, it's going to be all electronically -- you  
15 know, it's going to initiate the -- you'll have  
16 the -- it's an electronic web based or automated  
17 appraisal request originator, it also tracks it and  
18 then it gives you status reports. You can -- you  
19 know, the BIA can -- will initiate the -- or the  
20 tribal realty program initiates the appraisal  
21 request to ITARTS, and then it gets submitted  
22 forward, and it's all electronically transmitted or  
23 the status changes are electronically in the system.  
24 And you can also generate reports. You can track --  
25 anybody can track what stage the appraisal request

1 is -- is at, and it might alleviate some of the  
2 going back and forth because the -- the appraisal  
3 request would be initiated and it will be approved  
4 by a line official and then it will go forward to  
5 the OAS or to the tribal appraisers and then they'll  
6 get the product done and it will be transmitted back  
7 and the status will be updated.

8 MS. NELDA TYLER: This has been a real  
9 problem. This has been a real problem since our  
10 charges has been initiated into our tribe and what  
11 we are doing. Because this right here takes close  
12 to, at least 60 days, and that's at least 60 days  
13 for ITARS to take place, so I'm looking forward to  
14 something different.

15 MR. LESANSEE: Yeah. ITARS,  
16 unfortunately was deployed before it was ready and  
17 it is -- it is time to assume it won't be necessary.

18 MS. NELDA TYLER: Appreciate you.

19 MS. MEISNER: Can we take a break?

20 MR. LESANSEE: Okay, let's take a  
21 15-minute break.

22 (Recess).

23 MR. LESANSEE: Okay, we are going to get  
24 started here.

25 Welcome back. We'll continue on.

1 Welcome back, we'll continue back on the questions  
2 and answer session.

3 Is there anybody with any new questions  
4 that you have thought about over the break? We'll  
5 be happy to go over the formulas if you want.

6 MR. KEVIN DELLINGER: Hello, I'm Kevin  
7 Dellinger from Muscogee (Creek) Nation. The  
8 question I would just like for you to clarify with  
9 respect to land: Are we just talking trust and  
10 restricted land?

11 MS. MEISNER: Can you all hear back  
12 there?

13 FROM THE AUDIENCE: No.

14 MR. KEVIN DELLINGER: Hello. Kevin  
15 Dellinger with the Muskogee (Creek) Nation and I  
16 would just like to see clarification when we are  
17 talking land base, are we talking trust restricted  
18 only, no fee lands, if you could just clarify that?

19 MR. LESANSEE: Yes, and I'm glad you  
20 brought that up. Yes, for the land base formula,  
21 specifically it's for trust and restricted fee lands  
22 and not fee -- not fee or private property. We have  
23 got a -- a directive -- we were back with BIA. The  
24 Deputy Commissioner of Indian Affairs issued a  
25 directive which still stands, that OAS does not do

1 evaluations for fee property unless it involves, you  
2 know, congressional mandate or right-of-way crossing  
3 for, you know, fee property to help facilitate an  
4 acquisition of right-of-way. But -- so, yeah, when  
5 we talked about workload or -- we are talking  
6 strictly trust and restricted lands.

7 MR. WAYNE WYLIE: Was that tribal and  
8 individual?

9 MR. LESANSEE: Individual and tribal.

10 MS. MEISNER: Hold on. We didn't hear  
11 that. Your name?

12 MR. WAYNE WYLIE: Wayne Wylie, Choctaw  
13 Nation. You're talking about tribal as well as  
14 individual trust lands?

15 MR. LESANSEE: Yes. Yes, sir.

16 MR. WAYNE WYLIE: Thank you.

17 MR. LESANSEE: We have -- we have been  
18 involved in, like I say, legislative acquisitions,  
19 exchanges or something like that where it  
20 involves -- it may involve multiple ownerships like  
21 communal lands, estate lands, fee lands, county  
22 lands. You name it. Whoever, you know, is party to  
23 the -- to the land exchange for instance.  
24 Sometimes to make a land exchange work there's  
25 multiple people or entities involved. And like

1 in -- we had one in New Mexico about two years ago  
2 or three years ago, they called it the Bond Exchange  
3 and it involved BLN, state land, private land and in  
4 order to get -- the reason why the private property  
5 was involved, they were saying this right in between  
6 all this cluster of different ownerships, so it was  
7 a multiple ownership area or checkerboard area, so  
8 you may have those so scenarios then, and fee  
9 property will have to be part of the assignment in  
10 those cases.

11 Anybody else have a question? Anybody  
12 else have a question?

13 MS. LINDA DONALDSON: I want to make a  
14 comment. Linda Donaldson with the Cherokee Nation.  
15 One of our situations here on one of the -- several  
16 of the plans, Cherokee Nation has approximately  
17 185,000 members, and with a large member base that  
18 is going to probably skewer some of the numbers for  
19 some of the other tribes in some of our areas, in  
20 the tribe population base. Then again, we have  
21 approximately 60,000 -- well, more like 90,000 acres  
22 with our restricted Indian land, you are talking a  
23 fairly large size land base in conjunction with what  
24 the people in our region would have, which again  
25 might not be as fair to some of the other members,

1 other tribes in our area. And then you have the  
2 other situation where we have, our grazing units are  
3 done on a five-year basis, so we do our grazing  
4 every five years and if we are doing about 90  
5 appraisals every five years and about 60 every year,  
6 then you're looking at the possibility of going up  
7 to 150 one of those years and being down so we're  
8 going to hit a spike and then we're going to be at a  
9 level and it could cause us some problems because of  
10 the way it's done.

11 MR. LESANSEE: Right.

12 MS. LINDA DONALDSON: And so --

13 MR. FRAZIER: And we have looked at five  
14 year averages too.

15 MS. LINDA DONALDSON: Right.

16 MR. FRAZIER: I mean, that would be one  
17 thing, you go to a five-year average so you don't --  
18 because if you have a spike in one year and you are  
19 only -- you're only using three year averages, you  
20 come up to the year -- the year that you were about  
21 to get a spike your previous three years it's been  
22 down here and now all of a sudden you don't have  
23 enough money to cover that fifth year, so you  
24 want -- so in your case, you might want a five-year  
25 average to capture that big spike and carry it over.

1                   MS. LINDA DONALDSON: But even then with  
2 that averaging out over that period of time we still  
3 could be caught short on our monies because of  
4 the -- the higher amount of appraisals that is in  
5 the one year, especially if you can't do a lot of  
6 carryover.

7                   MR. LESANSEE: We are seeing that in one  
8 of the regions up in the northwest United States,  
9 they had a flood of probate -- no -- probate  
10 evaluations resulting from the Tribal Inheritance  
11 Act, which gives the tribe the first right of  
12 refusal, and that's really, unexpectedly jumped  
13 their numbers up around, I think it was at one point  
14 over 1,000 appraisals. And the tribe, when they  
15 entered into the program they didn't expect or  
16 anticipate that low to come their way.

17                   And so with this -- what we are doing  
18 here and discussing the -- what we are trying to do  
19 in making our formulas more dynamic, to look at the  
20 circumstances each year hopefully capture the  
21 differences or the changes that occur in the  
22 workload for the tribe.

23                   MS. DONNA ERWIN: I'm Donna Erwin and I'm  
24 the Principal Deputy Special Trustee, but we have  
25 heard across the country the story about the spikes

1 and some of the tribes have started actually  
2 shortening some of their leases so they can start to  
3 get more of a dynamic look, start trying to even out  
4 that workload because of the five-year leases,  
5 what -- seems sort of across the country is starting  
6 to say, well, let's do this one for four years;  
7 let's do this one to three years; this one for two  
8 years until we start getting that five-year spike  
9 sort of out of the way and plus it helps everyone  
10 trying to lease, so that's sort of an interesting  
11 side.

12 My question is a little more, what  
13 happens if you -- I mean, the work -- I like the  
14 workload personally I want to hear what everybody  
15 thinks, because I agree with Cherokee; some people  
16 get skew of the population not having a lot of  
17 activity, but what do we do for things that we know  
18 are coming on? I think somewhere we have got to  
19 talk about, we know the Department of Transportation  
20 is getting ready to build a highway and we know  
21 that's coming next year. We know there's a huge oil  
22 and gas sale going to happen. How do we -- is there  
23 a way or is there -- one that's not up there maybe  
24 as workload plus things we know is going to happen  
25 in the next year. Curiosity of how we try to adapt

1 to that.

2 MR. LESANSEE: Yeah, some of the -- in  
3 the past, a lot of communication with the realty or  
4 those that are, like the roads department, they have  
5 given us a heads up on what's coming our way,  
6 communicating with us, this project is coming or  
7 this activity is coming our way, and then initiating  
8 the request because if that pending for the coming  
9 year or say, 2009 is not over yet, for some reason  
10 say the last four, we anticipate, say, a lot of  
11 probates evaluations are needed. I mean, if  
12 probates -- the probate division will give us a  
13 heads up and start initiating the request, plan with  
14 us. Coordinate the work with us. We can anticipate  
15 that work and that pending is also counted for -- if  
16 we use current numbers, that pending is counted  
17 towards the workload. Just because the OAS hasn't  
18 got to them it's still an existing need.

19 MR. FRAZIER: I mean, we haven't really  
20 talked about this that much, but another way you  
21 could address that is in addition to their being a  
22 residual pool, you could have a reserve pool, and as  
23 it -- like things happen within a year, you say, I  
24 know that this highway is coming through, I know I  
25 am going to have some rights-of-way I've got to do,

1 you could have, for instance, and it's something we  
2 need to talk about how it would work, but you could  
3 have your 20 percent residual and then you could  
4 have a 20 percent or 10 percent reserve pool. Say,  
5 we're going to hold these funds back in case we get  
6 some unexpected spike and then at the end of the  
7 fiscal year we haven't used up that reserve pool we  
8 distribute it out to the tribes, according to the --  
9 that way -- you know, if there is left over money we  
10 go ahead and distribute it to all the tribes, but  
11 you hold it back for unexpected demand or expected  
12 demand.

13 MR. WAYNE WYLIE: Wayne Wylie, Choctaw  
14 Nation.

15 First of all, I met David Harjo over  
16 here, I haven't seen him in 45 years.

17 I would like to ask, Eldred, how did he  
18 come up with that figure, what it costs to run an  
19 appraisal office? Is that based on one appraiser  
20 and a secretary within, or is that based on what you  
21 could farm those average appraisals out to fee  
22 appraisers?

23 MR. LESANSEE: Well, which side? The  
24 federal side or the --

25 MR. WAYNE WYLIE: I'm looking at the

1 tribal side.

2 MR. LESANSEE: Tribal side. Well --

3 MR. WAYNE WYLIE: How do you decide how  
4 much money we get?

5 MR. LESANSEE: Well, going back to the  
6 regulation where it says, the amount that the  
7 secretary would have paid to provide the services is  
8 the amount that the tribes is entitled to. I think  
9 that's -- I'm kind of ad-libbing -- but I think  
10 that's what it says; right, Sally?

11 MS. HERNANDEZ: I'm sorry.

12 MR. WAYNE WYLIE: The reason I'm asking  
13 that is because I don't receive enough money to have  
14 a secretary, so I have to get paid out of a tribal  
15 office to sustain my programs.

16 MS. HERNANDEZ: I think the Choctaw  
17 Nation is one of those that receives what we call  
18 the old money; right, your tribes have basically --  
19 your appraisal funding has basically remained the  
20 same for all these years?

21 MR. WAYNE WYLIE: Yes, yes.

22 MR. LESANSEE: One of the things I guess  
23 to kind of stretch the funding or the funding amount  
24 for the tribes is going away from maybe site  
25 specific valuations to a more mass type or alternate

1 valuations so that you can stretch the dollars a  
2 little further. Some of the things that we're doing  
3 for like probates up in the Midwest is, what we are  
4 doing are market studies, or appraisal market  
5 analysis. And what we do is, we gather -- this  
6 works for properties that are homogenous, they are  
7 not complex, their highest and best -- highest and  
8 best uses are the same, and the data -- the dataset,  
9 there's a common dataset that could be used to do  
10 the valuation. And what we do is develop an  
11 appraisal model and from that appraisal model we  
12 generate single appraisals and it's usually  
13 restricted use reports, and that seems to keep us  
14 current with the demand up there. If we were to do  
15 single appraisals for each of those probate  
16 valuations it would just kill us, because we only  
17 have three people up there, but we are able to keep  
18 up using this alternative valuation methodology.

19 MR. WAYNE WYLIE: Well, I was told  
20 that -- I was told that OST does not accept  
21 restricted appraisal reports.

22 MR. LESANSEE: One of the things that --  
23 well, the department -- and it is -- the department  
24 has -- I guess a valid point in -- in not accepting  
25 restricted use reports because restricted use

1 reports, it's hard to do the review function if you  
2 don't have the work file that's attached to it,  
3 meaning the sales, the analysis that led up to the  
4 opinion of value. If you don't have that it's  
5 really hard.

6 But if you have a market study that uses  
7 the overall broad description of the analysis and so  
8 forth and so the reviewer can follow the logic, the  
9 reasoning and so forth that led to the evaluations  
10 then -- then I think the restricted use report can  
11 be obliged.

12 MR. WAYNE WYLIE: Okay.

13 MR. LESANSEE: In the new 2010 MNU it  
14 allows for the opportunity to apply the alternative  
15 evaluation methodologies, and if those tribal  
16 appraisers or the tribes that wish to participate or  
17 implement those new evaluation methodologies, it  
18 would be wise to talk to our regional appraisers and  
19 get the guidance so that you guys -- and work  
20 closely so you guys will be in sync as far as the  
21 specifications, the requirements and so forth to get  
22 that product passed or accepted. I think if you  
23 work closely I think it will almost, you know,  
24 guarantee -- not guarantee but it will make  
25 assurances that it will be an acceptable product.

1                   MR. FRAZIER: I just want to read  
2 something from the regs, boring I know, but because  
3 this has to do with the residual, what the residual  
4 is and what it isn't, because sometimes there's  
5 confusion about this. So this is from the regs.  
6 It's 25 CFR 1000.94. Says BIA residual function are  
7 those functions that only BIA employees could  
8 perform -- and this is the important part -- if all  
9 tribes were to assume responsibilities for all BIA  
10 programs that the act permits.

11                   So let me give you an example. Let's say  
12 we have a region with two tribes, one tribe compacts  
13 appraisals, the other tribe doesn't compact  
14 appraisals. Because the other tribe does not  
15 compact appraisals then OAS is going to have to do  
16 those appraisals themselves. They are either going  
17 to have to do it with their own staff appraisers or  
18 they are going to have to contract it out to private  
19 contractors.

20                   That money is not residual. Residual is  
21 the money that the department holds back for  
22 performing functions that only the department could  
23 perform. It's not functions that the department is  
24 also performing because they haven't been compacted.  
25 It's for performing noncompactible functions. So

1 like sometimes people think that -- that the  
2 residual is everything OAS spends that the tribes  
3 aren't spending or they haven't been given over to  
4 the tribes for 638. That's not true. If there are  
5 tribes, and usually most regions -- some regions are  
6 obviously fully compacted out or fully contracted  
7 out, but there are a number of regions where they  
8 have -- there's some direct service tribes that  
9 they -- the OAS does all of their appraisal work.  
10 That money is spent on those tribes for doing the  
11 reports, not the reviewing the approval, for doing  
12 the reports, is not the residual. Is that clear?  
13 Confusing?

14 MS. ANGELA THOMPSON: Angela Thompson,  
15 Cherokee Nation. What is the time frame that you're  
16 going to start implementing the changes? Is there  
17 any set time frame at what you are looking at?

18 MR. FRAZIER: I -- that really kind of  
19 depends how the consultations go. I think  
20 originally we were hoping to have something in place  
21 for fiscal year ten, FY 2010. I don't know if we're  
22 going to be able to get to through the consultations  
23 and come up with a final federal decision by then.  
24 We are still kind of aiming for that but depending  
25 on what happens in these consultations that may not

1 be possible, in which case it probably would not be  
2 completed until fiscal year 2011.

3 MS. ANGELA THOMPSON: So this -- the  
4 series of meetings that you have scheduled now is  
5 the consultation? There isn't going to be no other  
6 consultation by region where the tribes can come in?

7 MR. FRAZIER: We haven't decided that.  
8 When haven't decided that. I mean, it's very likely  
9 the case that there will be a second round of  
10 consultations or if not a second round of regional  
11 consultation then maybe a central like someplace  
12 where -- I don't know, someplace central like Denver  
13 or someplace like that, but we haven't decided. We  
14 have to see what happens in the first round of  
15 consultations.

16 MS. ANGELA THOMPSON: And the tribes will  
17 be included --

18 MR. FRAZIER: Oh, yes, yes.  
19 Consultations by definition include tribes, yes.

20 MS. ANGELA THOMPSON: There's a  
21 recommendation for Hawaii.

22 MR. LESANSEE: We're looking for a tribe  
23 in Hawaii.

24 MS. MEISNER: This is Debbie Meisner.  
25 One of the things, though, that we do know, no

1 matter what formula we come up with any tribe that  
2 has the old money basically will be getting much  
3 more than what they are currently getting.

4 MR. WAYNE WYLIE: Thank you.

5 MS. MEISNER: Because, again, you're not  
6 able to take advantage of the new money that OAS has  
7 received in the last couple of years, so that's why  
8 we really want to push this. We know that a lot of  
9 the tribal programs are really suffering and of  
10 course you can't supplement with our new money but  
11 if we can we -- we do the formula calculations then  
12 we are able -- we will be in a position where we can  
13 fund those unknown things or whatever because we  
14 have the opportunity to supplement the fund based on  
15 the formulas.

16 MS. HERNANDEZ: Questions? Comments?

17 MR. LESANSEE: I mean, is there any  
18 other questions related to the tribal shares or --  
19 or evaluations in general, is there any other -- is  
20 there anything else that you would like to discuss  
21 as far as evaluations.

22 MR. KEVIN DELLINGER: I was just  
23 wondering -- Kevin Dellinger with Muscogee (Creek)  
24 Nation. You had mentioned to us that you had some  
25 of your ideas or what your thoughts were on which

1 formula you preferred; I think at the beginning you  
2 said --

3 MR. LESANSEE: Well, I think doing our  
4 analysis and applying the data, the five-year data  
5 that we have accumulated from the regional -- 12  
6 regional offices, it -- it makes -- the one formula  
7 that makes the most sense but it -- you know, it's  
8 the workload formula, workload based formula,  
9 because it has a direct relationship on the activity  
10 that each of the tribes are, you know, actively  
11 involved in or I guess realty. The question is  
12 if -- if the BIA -- the controlling factor would be  
13 if the BIA, say, are understaffed but the tribe  
14 needs the appraisals but the requests aren't being  
15 initiated, that might impact, you know, the workload  
16 base formula. But everything else, working smoothly  
17 and efficiently it should -- it seems like it would  
18 be consistent with the changes and fluctuations in  
19 the -- in the appraisal activities or the need for  
20 appraisals.

21 MR. FRAZIER: And a question that came  
22 up, kind of in the break, is the issue of fairness.  
23 You know, well, this should be apportioned fairly,  
24 and like somebody said, well, the fairest thing is  
25 just to give an equal share all across. All tribes

1 getting an equal share. Well, if you're a very  
2 large tribe you say, well, I don't think that is  
3 really fair, the fairest thing would be to, you  
4 know, my tribe has more land, the fairest thing is  
5 to do it by land or population.

6 But this is the law that governs us, it  
7 says the amount of funds shall not be less than the  
8 appropriate secretary would have otherwise provided  
9 for the operation of the program.

10 In other words, if there were no 638, if  
11 OAS was doing all of this direct service, and you  
12 had three tribes in a region, one tribe did all the  
13 appraisal work and the other two tribes have no  
14 appraisal requests, if there were no 638, the  
15 secretary would spend all that money on the one  
16 tribe. And the law doesn't say, divide it up  
17 fairly. Doesn't say, divide it up equally. It  
18 says, divide it in a way that the secretary  
19 otherwise would have spent that money on the tribe,  
20 and that's the law that governs us.

21 That's probably the primary thing we look  
22 at. As Eldred said, we -- of all the things we have  
23 looked at, the thing that has the most direct  
24 correlations to what the secretary otherwise would  
25 have spent on a tribe is the history, the workload

1 history. If in the past five years -- if in the  
2 past five years one tribe has done 90 percent of the  
3 appraisal requests and the rest of the tribes have  
4 done only 10 percent, it's not in concordance with  
5 this law, it's not in compliance with this law to  
6 then say, we're going to give an equal share to  
7 every tribe. It's just not.

8 MR. LESANSEE: But on the other hand, on  
9 the other hand, you know, these are just -- these  
10 are just ideas. You know, we welcome your ideas as  
11 far as -- maybe there's a workload base formula that  
12 is a hybrid or something that you might have ideas  
13 that could actually reflect your situation as far  
14 as -- of operating, you know, you mentioned, Wayne,  
15 about not enough money. Is there another idea that  
16 could make it more equitable?

17 I mean, we are open to -- we want your  
18 ideas, in other words. And we'll carry them forward  
19 at each session and present them and share with the  
20 other -- the other tribes. And at the end hopefully  
21 we'll have some really good ideas and will help lead  
22 to a new formula that will be more equitable to all  
23 of the tribes.

24 MS. ALECIA ONZAHWAH: Good morning, my  
25 name is Alecia Onzahwah. I'm the Tribal

1 Representative for the Absentee Shawnee Tribe. And  
2 you mention you didn't know whether or not you all  
3 were going to do any work in consulting, you know,  
4 one-on-one with the tribes but, I think -- I, for  
5 the record, I guess would like to say that I think  
6 it would probably be beneficial to the tribes if we  
7 gave our program people time enough to go back,  
8 bring the news back to the tribal leaders, discuss  
9 it, have more dialogue on it and then do another  
10 session. So I would like to request that if -- if  
11 that, you know, is at all possible. Thank you.

12 MS. HERNANDEZ: And of course you are  
13 always free to submit written comments. Do we have  
14 our mailing address on one of the slides?

15 MR. FRAZIER: We have the phone numbers.

16 MS. HERNANDEZ: Phone numbers. We have  
17 phone numbers. You can call -- the federal  
18 register, the website. I think I sent that to many  
19 of you. The website, you can get the address from  
20 there and submit your written comments.

21 MR. FRAZIER: We haven't done this yet  
22 but we can probably also set up an e-mail address  
23 for this project at OST that -- and we'll distribute  
24 that. We'll put it on the website so that if you  
25 want to e-mail stuff to us you can e-mail it to an

1 address.

2 MS. DONNA ERWIN: Donna Erwin. I do like  
3 the idea of getting the comments the first time and  
4 then maybe going back regionally, maybe getting a  
5 small group together or something and talk about it.

6 But the other thing, like I said, I do  
7 like the workload idea but I have another question.  
8 I'm full of questions today.

9 My other question is: What happens to  
10 the one that you said, look this tribe only had two  
11 appraisals, but those two were just huge. I mean,  
12 it was a large complex, maybe you are in a urban  
13 area and it was a huge commercial property or  
14 something that's getting ready to go up, so how do  
15 you -- if it was a really large project, how do we  
16 take into the overall formula the workload, the  
17 complexity?

18 MR. LESANSEE: That's a good question,  
19 because oftentimes the complexity directly relates  
20 to cost. A fee appraiser will want to be paid  
21 adequately for all the research and analysis that it  
22 takes to come up to do an evaluation of a complex  
23 appraisal.

24 We have talked about even having a  
25 minimum based base plus an additional amount to

1 account for some of those tribes that are very small  
2 and may not have very much activity but to assure  
3 that they at least get enough money to pay for one  
4 appraisal.

5 MR. FRAZIER: And another thing we looked  
6 at, this is our hypothetical workload based, and  
7 what Donna is alluding to is, that 35 assumes that  
8 all of those appraisals are of equal weight, that  
9 they all cost the same thing, what Donna suggested,  
10 no, there could be some very complex ones, and we  
11 have talked about that.

12 We talked about giving sort of a  
13 different weight, a heavier weight on compact  
14 appraisal, or less weight to a simple appraisal.  
15 The problem with that is, is kind of the book  
16 keeping behind it and if you have -- like if you had  
17 five categories of appraisals, you know, you would  
18 want to say, well, this one counts for a lot, this  
19 one counts for a little, but who's -- our problem  
20 with that, I guess, I could hear back from you guys  
21 what you think about this, but every tribe is going  
22 to say, mine were all really, really complex. Yeah,  
23 every one of my 35 were -- I didn't have any of the  
24 cheap ones, they were all the really expensive ones  
25 so give me full weight for all of them.

1                   So to avoid that problem we thought it  
2 might make more sense just to say, an appraisal  
3 product is an appraisal product, it will be simpler  
4 to account for and it will -- let's say we have a  
5 very honest tribe say, you know, all of mine -- I'm  
6 not saying some tribes are dishonest but people will  
7 try to play the system, and if someone is like say,  
8 you know, I wish I could say all of my appraisals  
9 were complex but, in fact, they weren't, and because  
10 everyone else in the region is getting full weight  
11 that one tribe who is just trying to play by the  
12 rules they are getting less of the shares. So to  
13 avoid things like that we -- we -- at least in this  
14 example, again, this is not fixed, in this example  
15 all appraisal products count for the same weight.

16                   MR. LESANSEE: I think where that is  
17 considered as -- is the -- the initial allocation of  
18 the tribal -- not tribal, but the regional appraisal  
19 budgets. The costs or the cost of operating for  
20 each of the region is a reflection of a complexity.

21                   Say, for instance, south -- no, pacific  
22 region in Sacramento, they have got Palm Springs,  
23 they have got a lot of urban centers or properties  
24 there within the urban centers and their evaluations  
25 are pretty high, the cost of evaluations are

1 extremely high even though the workload is low but  
2 the budget reflects the higher amount because of the  
3 cost of doing business. And so it's built into the  
4 budget. The base budget for each of the regions.

5 MS. MEISNER: Debbie Meisner. One other  
6 thing to take into consideration, if we allocate or  
7 do a new formula is because we are doing new  
8 formulas if you are only getting \$5,000 for your  
9 program and you come up with two appraisal requests  
10 it could be \$7,000, there's nothing to stop you from  
11 coming forward and saying, hey, I need two more  
12 thousand dollars to do these complex appraisals. If  
13 you were to do that now because of the restraint  
14 that we were under because of the old regulations,  
15 we are not allowed to supplement you that \$2,000.

16 But once we -- once we do change, we are  
17 not stuck anymore in not being able to provide what  
18 it really would be to run your programs.

19 MS. NELDA TYLER: Nelda Tyler, Creek  
20 Nation. Do you realize. I'm sure you do. I know  
21 you do. Realize that for some of the appraisals  
22 that we do are less than what it costs us to  
23 produce? Is there -- even -- sometimes it would be  
24 better just to give the Indian citizens the money  
25 than to go through the system that we have in place

1 right now. We have some appraisals, a lot of  
2 appraisals less than \$500 and, to go through our  
3 system it costs \$500 even to get it approved.

4 MR. LESANSEE: I agree. Especially when  
5 you consider the number of people that are involved  
6 in the process, not just the appraisers but the  
7 realty and everybody else that's involved in the  
8 operation, somebody tracking it, somebody initiating  
9 the request, it can accumulate the total cost, it's  
10 quite a bit. And in some cases too, I mean, what we  
11 are looking at too is evaluation requirements,  
12 overall across the country the Indian Affairs --  
13 Indian Affairs looking at the current regulations  
14 and the new public law being the American Indian  
15 Probate Reform Act, and what does that provide as  
16 far as, is there -- is there other methodologies  
17 that we can apply; is there situations where an  
18 appraisal may be waived; like for instance,  
19 evaluations for road right-of-ways where the  
20 landowner is benefiting, it's for tribal use, it's a  
21 road to provide safe travel across -- across -- to  
22 and from point A to point B, and even though -- and  
23 say the tribe even operates the program under the  
24 Indian Self-Determination Act, and they are  
25 essentially, if you provide -- if you required an

1 appraisal they are essentially pulling money away  
2 from their own program to get the appraisal and at  
3 the end there's no way of consideration because they  
4 are going to be charging themselves, they are going  
5 to be billing themselves. So it doesn't make sense  
6 but the law requires that we have to give them an  
7 appraisal now -- or the regulations require an  
8 appraisal.

9 MR. CHARLES MALLOY: Charles Malloy,  
10 Citizen Pottawatomie. I've heard several references  
11 to an old funding system and a new funding system,  
12 would somebody explain that, please?

13 MR. FRAZIER: Well, it's -- it's not an  
14 open system. We -- we -- it's shorthand that we use  
15 to make sense of the different flows of money, to  
16 make sense to us, so we know what we are talking  
17 about.

18 When we refer to old money we are talking  
19 about, probably most of you, a compacting tribe that  
20 received a base funding amount in their annual  
21 funding agreement, that were negotiated years before  
22 and so that in the Appropriations Act there's a line  
23 item for what is allocated to Office of  
24 self-governance for the appropriations.

25 And then in your annual funding

1 agreements it has a line item with a set amount  
2 which you have probably gotten year after year after  
3 year and it hasn't changed for ten years. That's  
4 the old money. That's the OSG compacting base  
5 funding money. That's what we refer to as old  
6 money, and that was put into place before OST was  
7 even created.

8           And then we inherited the appraisal  
9 program in about 2002, and then we got some of the  
10 money -- some of the money in 2003, but that base  
11 funding, that OSG base funding or what you call TPA  
12 money, that we don't control. It never flows  
13 through us even though we direct the program and OAS  
14 falls under OST now, that portion of the money we  
15 don't control. OSG controls that money. It's  
16 appropriated to BIA, actually ASHA not BIA, but it  
17 goes to OSG and we never control that. That's what  
18 we call old money.

19           New money is money that is appropriated  
20 to OST and we can use for contracts and new  
21 compacts. A tribe newly wanting to compact  
22 appraisals, they don't have a base funding amount  
23 right now, their money would come through us.

24           So does that make sense at all? It's a  
25 muddle to us too, but that's kind of how -- that's

1 how it lays out.

2 MR. CHARLES MALLOY: Thank you.

3 MS. HERNANDEZ: Silence is golden.

4 Anyone else? Okay.

5 MR. LESANSEE: Well, I guess in closing  
6 I would like to say I appreciate the opportunity for  
7 coming here for -- for making the -- making the time  
8 and the effort out of your -- you know, making the  
9 time out of your regular schedules to come out here  
10 and discuss this issue. Hopefully the information  
11 that we have provided to you will lead to some more  
12 questions, and some ideas and some comments and so  
13 forth that will help us reach -- reach our goal,  
14 which is to come up with a formula that will be  
15 equitable across the country. And we support the  
16 Indian Self-Determination Program and we'd like to  
17 come up with a formula that would work for the  
18 tribes and give them the opportunity to take off  
19 according.

20 Thank you very much. Have a safe trip  
21 home.

22 \* \* \* \* \*

23

24

25